

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

Defendant.

Case No. 2:17-cr-00114-APG-CWH

ORDER

Presently before the court is pro se Defendant David Alan Cohen's Motion that Monique Kirtley Amounted to Ineffective Counsel (ECF No. 59), filed on May 9, 2017. The government filed a response (ECF No. 70) on May 19, 2017. Cohen did not reply.

On September 23, 2016, Cohen appeared before the Honorable Magistrate Judge Nancy Koppe charged by way of a criminal complaint with two counts relating to child pornography. (Compl. (ECF No. 1); Mins. of Proceedings (ECF No. 3).) The Federal Public Defender's Office was appointed to represent Cohen, and on September 28, 2016, Assistant Federal Public Defender Monique Kirtley noticed her appearance in the case. (Order Appointing Counsel (ECF No. 5); Notice of Appearance (ECF No. 6).) Later, the court granted Ms. Kirtley's request to withdraw from representation on January 25, 2017, and David Fischer was appointed to represent Cohen. (Mins. of Proceedings (ECF Nos. 20, 21); Order Appointing Counsel (ECF No. 23).) Cohen then moved to represent himself, but withdrew that request on March 8, 2017. (Mins. of Proceedings (ECF No. 28).) He again moved to represent himself, which was granted on April 3, 2017. (Mins. of Proceedings (ECF No. 32).)

A federal grand jury indicted Cohen on April 12, 2017, alleging that beginning on a date unknown and continuing to on or about September 21, 2016, he did knowingly possess child

1 pornography and any material that contains child pornography, in violation of 18 U.S.C. § 2256(8),
2 and did receive and distribute child pornography and any material that contains child pornography,
3 as defined in 18 U.S.C. § 2256(8), all in violation of 18 U.S.C. 2252A(a)(5) and 2252A(a)(2) and
4 (b). (Indictment (ECF No. 37).) The defendant was arraigned on the indictment on April 14,
5 2017. (Mins. of Proceedings (ECF No. 41).) Trial is set for September 11, 2017. (Mins. Of
6 Proceedings (ECF No. 100).)

7 Cohen alleges that Ms. Kirtley provided ineffective assistance of counsel during the time
8 she represented him. Cohen describes various disagreements he had with Ms. Kirtley regarding the
9 defense of the case. The government responds that the motion for ineffective assistance of counsel
10 is premature because trial has not occurred, and Ms. Kirtley is not longer his counsel. The court
11 agrees. “The benchmark for judging any claim of ineffectiveness must be whether counsel’s
12 conduct so undermined the proper functioning of the adversarial process that the trial cannot be
13 relied on as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984).
14 Here, the trial has not occurred. Ms. Kirtley was replaced by Mr. Fischer, and now Cohen has
15 assumed responsibility for his own defense. He has filed numerous motions, and hearings have
16 been conducted. It is premature to make a determination about ineffective assistance of counsel
17 because the trial has not occurred.

18 Accordingly, IT IS ORDERED that Cohen’s Ineffective Assistance of Counsel Motion
19 (ECF No. 59) is DENIED without prejudice for Cohen to renew the motion after trial, if necessary.
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21 DATED: June 16, 2017

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23 C.W. Hoffman, Jr.
24 United States Magistrate Judge
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